

Supreme Court, U.S.  
**FILED**

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**JOSEPH F. SPANIOL, JR.**  
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No. 86—1409 (2)

**In The  
Supreme Court of the United States**

October Term, 1986

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA;  
DISTRICT 17, UNITED MINE WORKERS OF AMERICA; UNITED MINE  
WORKERS OF AMERICA, LOCAL UNION NO. 1525,

*Petitioners,*

v.

A. T. MASSEY COAL COMPANY, INC.; RAWL SALES AND PROCESSING  
COMPANY/BLACKBERRY CREEK COAL COMPANY; SPROUSE CREEK  
PROCESSING COMPANY; TALL TIMBER COAL COMPANY; PIKCO  
MINING COMPANY; ROCKY HOLLOW COAL COMPANY; BLUE SPRINGS  
COAL COMPANY; ALLBURN COAL COMPANY, INC.; POND CREEK  
MINING COMPANY; P. M. CHARLES COAL COMPANY; WYOMAC COAL  
COMPANY, INC.; WINSTON COAL COMPANY; ROBINSON-PHILLIPS  
COAL COMPANY; M. & B. COAL COMPANY; SIMRON FUEL INC.;  
SHANNON-POCAHONTAS COAL COMPANY; ROYALTY SMOKELESS  
COAL COMPANY/TRACE FORK COAL COMPANY; BIG BEAR MINING  
COMPANY; PIKE COUNTY COAL CORPORATION; JOBONER COAL  
COMPANY; TCH COAL COMPANY; BIG BOTTOM COAL COMPANY,  
INC.; OMAR MINING COMPANY; and DEHUE COAL CORPORATION,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT**

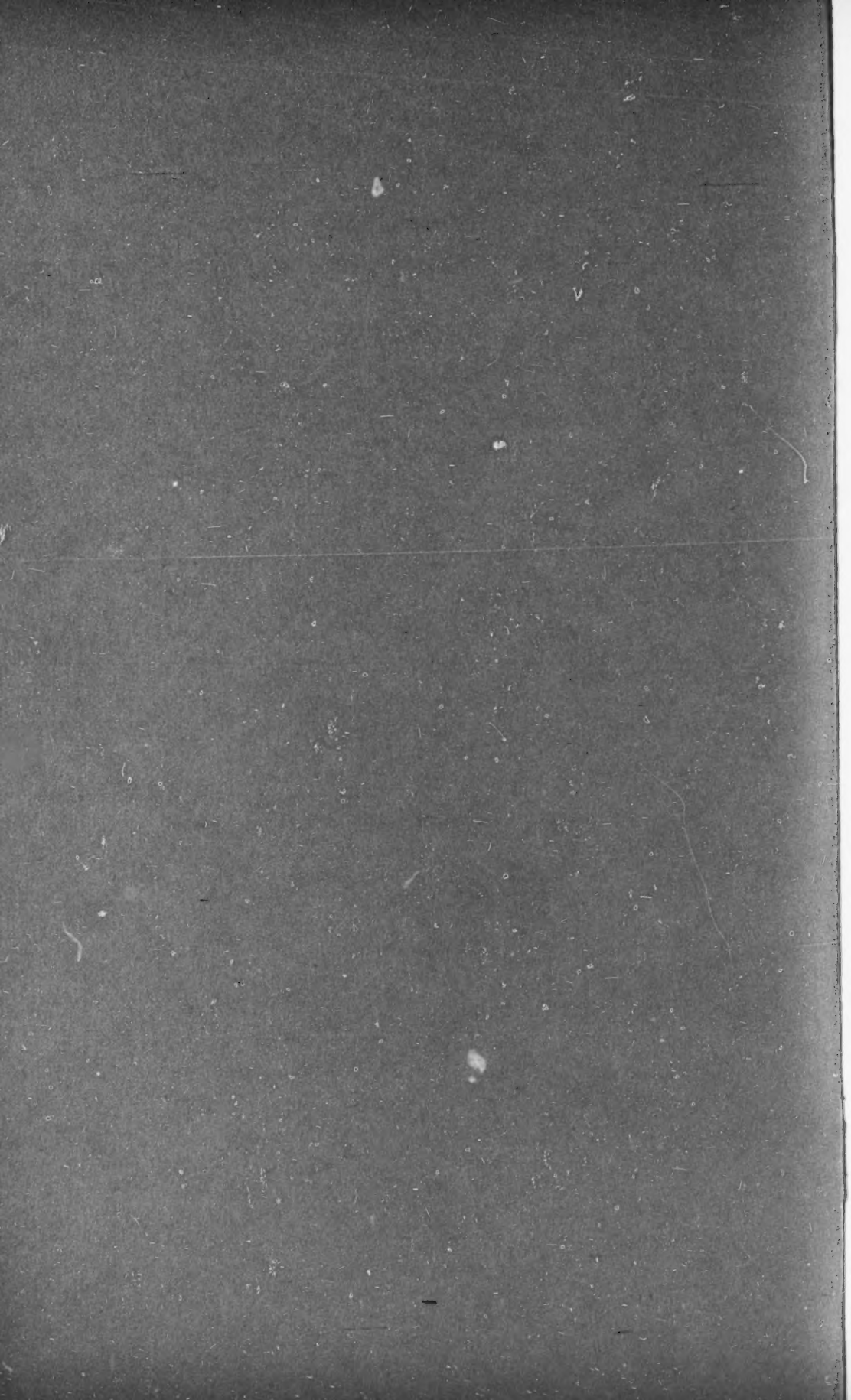
**BRIEF FOR A. T. MASSEY COAL COMPANY, INC., *et al.*  
IN OPPOSITION**

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## QUESTIONS PRESENTED

1. Did the court of appeals correctly determine that, where a union and individual subsidiaries of a common parent have a collective bargaining history of separate negotiations and the employees of each subsidiary constitute separate bargaining units, one subsidiary cannot bind other subsidiaries to a collective bargaining agreement without authorization from those subsidiaries to do so?
2. In the absence of dispute regarding material facts, did the appellate court err in rendering final decision on appeal?



## TABLE OF CONTENTS

|  | PAGE       |
|--|------------|
| QUESTIONS PRESENTED .....  | <i>i</i>   |
| TABLE OF CONTENTS .....  | <i>ii</i>  |
| TABLE OF AUTHORITIES .....   | <i>iii</i> |
| STATUTES INVOLVED .....  | 2          |
| STATEMENT OF THE CASE .....  | 2          |
| 1. FACTUAL BACKGROUND .....  | 2          |
| 2. LITIGATION HISTORY .....  | 7          |
| ARGUMENT SUMMARY .....   | 8          |
| ARGUMENT .....   | 9          |
| 1. THE FOURTH CIRCUIT'S DETERMI-<br>NATION THAT CONTRACTUAL<br>AGREEMENT BY ONE BARGAINING<br>UNIT DOES NOT BIND OTHER,<br>SEPARATE BARGAINING UNITS,<br>ABSENT THEIR AUTHORIZATION, IS<br>CONSISTENT WITH ESTABLISHED<br>LABOR LAW PRINCIPLES ..... | 9          |
| 2. THE FOURTH CIRCUIT'S DECISION<br>DOES NOT CONFLICT WITH THOSE<br>OF OTHER CIRCUITS .....  | 13         |
| 3. THE UMWA'S CORPORATE VEIL PIERC-<br>ING ARGUMENT DOES NOT APPLY TO<br>THIS CASE .....   | 15         |
| CONCLUSION .....   | 17         |
| APPENDIX .....   | App. 1     |

(ii)



## TABLE OF AUTHORITIES

### Cases

|   | Page   |
|---|--------|
| <i>Alkire v. NLRB</i> , 716 F. 2d 1014, 1021 n.5 (4th Cir. 1983).....   | 15     |
| <i>American Bell, Inc. v. Federation of Telephone Workers</i> , 736 F.2d 879 (3rd Cir. 1984) .....  | 15, 16 |
| <i>AT&amp;T Inf. Systems v. Local 13000</i> , 797 F. 2d 147, 151 (3rd Cir. 1986) .....  | 16     |
| <i>AT&amp;T Technologies, Inc. v. Communications Workers of America, et al.</i> , ____ U.S. ____, 106 S. Ct. 1415 (1986) .....  | 7, 8   |
| <i>Carpenters Local 1478 v. Stevens</i> , 743 F. 2d 1271 (9th Cir. 1984), <i>cert. denied</i> , 471 U.S. 1015 (1985).....   | 15     |
| <i>Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.</i> , 690 F.2d 489, 505 (5th Cir. 1982), <i>cert. denied</i> , 464 U.S. 932 (1983).....  | 14, 15 |
| <i>Contractors, Laborers, Teamsters &amp; Engineers Health and Welfare Plan v. Hroch</i> , 757 F.2d 184 (8th Cir. 1985).....  | 16     |
| <i>Crest Tankers, Inc. v. National Maritime Union</i> , 605 F. Supp. 1270, 1276 (E.D. Mo. 1985), <i>rev'd on other grounds</i> , 796 F.2d 234 (8th Cir. 1986).....                            | 14, 15 |
| <i>Edward J. White, Inc.</i> , 237 NLRB 1020, 1025 (1978) .....   | 15     |
| <i>Gateway Structures, Inc. v. Carpenters 46 Northern Calif. Counties Conference Bd.</i> , 779 F.2d 485, 489 (9th Cir. 1985) .....  | 14     |
| <i>George M. Hart d/b/a San Diego Cabinets</i> , 183 NLRB 1014 (1970), <i>enforced sub. nom NLRB v. Hart</i> , 1453 F.2d 215 (9th Cir. 1971), <i>cert. denied</i> , 409 U.S. 844 (1972) ..... | 13     |
| <i>Hurwitz v. Directors Guild of America, Inc.</i> , 364 F.2d 67 (2nd Cir.), <i>cert. denied</i> , 385 U.S. 971 (1966) ...  | 17     |

|   |            |
|---|------------|
| <i>International Brotherhood of Electrical Workers, Local 1049 (Lewis Tree Services, Inc.), 244 NLRB 124 (1979)</i> .....   | 13         |
| <i>International Union of Operating Engineers, Locals 542, 542-A, 542-B (York County Bridge, Inc.), 216 NLRB 408 (1975), enforced, 532 F.2d 902 (3rd Cir. 1976), cert. denied, 429 U.S. 1072 (1977)</i> ..... | 13         |
| <i>International Union, United Automobile Workers v. Cardwell Manufacturing Co., Inc., 416 F. Supp. 1267 (D. Kan. 1976)</i> .....   | 16         |
| <i>Local 32B-32J, Service Employees (Allied Maintenance Corp.), 258 NLRB 430 (1981)</i> .....   | 10, 13     |
| <i>Local 627, International Union of Operating Engineers v. NLRB, 595 F.2d 844 (D.C. Cir. 1979)</i> ....  | 15         |
| <i>Local One v. Stearns &amp; Beale, Inc., 812 F.2d 763, 124 L.R.R.M. (BNA) 2809, 2816 (2nd Cir. 1987)</i> .....  | 12         |
| <i>Local Union No. 323, International Brotherhood of Electrical Workers (Active Enterprises, Inc.), 242 NLRB 305 (1979)</i> .....   | 10, 11, 13 |
| <i>MacMullen v. South Carolina Electric &amp; Gas Co., 312 F.2d 662, 670 (4th Cir.), cert. denied, 373 U.S. 912 (1963)</i> .....  | 17         |
| <i>Naccarato Construction Co., 233 NLRB 1394 (1977)</i> ...   | 15         |
| <i>NLRB v. Al Bryant, Inc., 711 F.2d 543 (3rd Cir. 1983), cert. denied, 464 U.S. 1039 (1984)</i> .....  | 15         |
| <i>NLRB v. Don Burgess Construction Corp., 596 F.2d 378, 386 (9th Cir.), cert. denied, 444 U.S. 940 (1979)</i> ..   | 14         |
| <i>Plumbers &amp; Fitters, Local 761 v. Matt J. Zaich Construction Co., 418 F.2d 1054, 1058 (9th Cir. 1969)</i> .   | 17         |
| <i>Scarborough v. Ridgeway, 726 F.2d 132, 135 (4th Cir. 1984)</i> .....   | 17         |
| <i>Service Employees Union, Local 47 v. Commercial Property Services, 755 F.2d 499 (6th Cir.), cert. denied, 106 S.Ct. 147 (1985)</i> .....   | 16         |
| <i>Seymour v. Hull and Moreland Engineering, 605 F.2d 1105 (9th Cir. 1979)</i> .....  | 16         |

|   |            |
|---|------------|
| <i>Shell Oil Co.</i> , 194 NLRB 988 (1972), <i>enforced</i> , 486 F.2d 1266 (D.C. Cir. 1973) .....  | 10, 11, 13 |
| <i>South Prairie Construction Co. v. Local No. 627, Int'l Union of Operating Engineers</i> , 425 U.S. 800 (1976) .....  | 15         |
| <i>UMWA, Local 1854</i> , 238 NLRB 1583, 1618 (1978), <i>enforcement denied in part, Amax Coal Co. v. NLRB</i> , 614 F.2d 872 (3rd Cir. 1980), <i>rev'd in part</i> , 453 U.S. 322 (1981) ..... | 9          |
| <i>United Paperworkers International Union v. T. P. Property Corp.</i> , 583 F.2d 33, 35-36 (1st Cir. 1978) .....   | 17         |
| <i>United Rubber, Cork, Linoleum and Plastic Workers v. Great American Industries, Inc.</i> , 479 F. Supp. 216 (S.D.N.Y. 1979) .....  | 16         |
| <i>Utility Workers Union (Ohio Power Co.)</i> , 203 NLRB 230, 238 (1973), <i>enforced</i> , 490 F.2d 1383 (6th Cir. 1974) .....   | 10, 11, 13 |

## Statutes

### National Labor Relations Act

|                             |               |
|-----------------------------|---------------|
| 29 U.S.C. § 158(b)(3) ..... | 13            |
| 29 U.S.C. § 159 (a) .....   | 2, 10, App. 1 |

### Labor-Management Relations Act

|                       |   |
|-----------------------|---|
| 29 U.S.C. § 185 ..... | 2 |
|-----------------------|---|

## Other Authorities

|   |   |
|---|---|
| C. MORRIS, <i>THE DEVELOPING LABOR LAW</i> 473-484 (2nd ed. 1983) ..... | 3 |
|---|---|

\* As required by Rule 28.1, Rules of the Supreme Court, all respondents state that they are wholly owned by Massey Coal Company, a Delaware Partnership. The partners of the Massey Coal Company partnership are St. Joe Minerals Corporation and Scallop Coal Corporation, neither of which are publicly held. However, St. Joe Minerals Corporation is owned by Fluor Corporation, a publicly held company. Scallop Coal Corporation is owned by Shell Oil Company which is not publicly held. Shell Oil Company is owned by Royal Dutch/Shell Group, a publicly held corporation. Royal Dutch/Shell Group also owns Shell Transport and Trucking Company which is publicly held.



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BRIEF FOR A. T. MASSEY COAL COMPANY, INC., *et al.*  
IN OPPOSITION

---

A. T. Massey Coal Company, Inc., *et al.* (collectively "A. T. Massey" or "Massey") respectfully request the petition for certiorari filed by International Union, United Mine Workers of America, *et al.* (hereinafter "UMWA" or "union") be denied.<sup>1</sup>

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<sup>1</sup> A. T. Massey concurs in the union's report of opinions below and statement of jurisdiction. J.A. \_\_\_\_ cites are to the Joint Appendix filed in the court below. References to the opinions below shall be to the Petition appendix, 1a to 25a.

## **Statutes Involved**

In its petition, UMWA noted that Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 U.S.C. § 185 is involved in this case. In addition, Section 9(a) of the National Labor Relations Act, 49 Stat. 453, 29 U.S.C. § 159(a) is applicable to the case and is set forth as an Appendix.

## **STATEMENT OF THE CASE**

### **1. Factual Background**

The facts of this case are unique but not sufficiently set forth in the petition. As an understanding of them is necessary for consideration of the petition, they will be set forth in more than usual length.

Respondent companies are engaged in the coal business in Kentucky and West Virginia. The nineteen "operating" companies mine or process coal, some having done so for more than twenty years.<sup>2</sup> During that period employees of each operating company have been represented by the UMWA for collective bargaining purposes and UMWA has bargained with each company separately throughout their bargaining relationship. As admitted by the UMWA, the employees of each company constitute a separate, "historic, recognized bargaining

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<sup>2</sup> A. T. Massey, located in Virginia, is the parent of all respondent companies. Four of the 24 respondent companies are known as "resource" companies which provide coal mining and processing services to the nineteen "operating" companies which employ coal miners and mine coal. A. T. Massey and the resource companies have never been party to a contract with the UMWA and do not employ employees represented by the union.

unit, the appropriateness of which is not questioned in this or any other proceeding." (J.A. 161). As demonstrated below this fact is dispositive of this case.

The operating companies became parties with the UMW to the 1981 National Bituminous Coal Wage Agreement (NBCWA) which expired on September 30, 1984. (3a). Most, but not all, did so by their participation in multi-employer bargaining through the Bituminous Coal Operator's Association ("BCOA"). Some of the companies authorized respondent Omar Mining Company, also a BCOA member, to act for them within BCOA.

Prior to the June, 1984 commencement of negotiations between BCOA and the union for the 1984 contract (1984 NBCWA), each operating company, except Omar, withdrew from BCOA any authority for that organization to bargain on its behalf.<sup>3</sup> (3a). Each advised the union that it would "not be bound by subsequent labor negotiations between BCOA and the . . . UMW." (J.A. 1020). Because Omar chose to remain in BCOA, each operating company also informed Omar and the union that Omar had no authority "to conduct collective bargaining negotiations" on its behalf. (*Id.*).

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<sup>3</sup> Multi-employer bargaining is based on the consent by each participating company to allow the association to bargain with the union on its behalf. The resulting contract is binding on all members of the group. Employer members retain the right to withdraw from the group and bargain separately with the union representing their employees as long as they do so on a timely basis. *See, C. MORRIS, THE DEVELOPING LABOR LAW* 473-484 (2nd ed. 1983). There is no dispute that the withdrawals by the companies in this case were accomplished in a timely, lawful and effective fashion. (J.A. 1263).

In July, 1984 UMWA President Trumka wrote each operating company stating "the collective bargaining agreement (1981 NBCWA) between your company and the International Union" will be terminated "effective. . . September 30, 1984." (J.A. 1026). At each location President Trumka also established a UMWA bargaining team to bargain for "the bargaining unit. . . at your. . . company." (J.A. 1037).

During the summer and fall of 1984, each operating company, except Omar, separately bargained with the UMWA for a successor to the 1981 NBCWA. (*Id.*). Each received and declined a written request from the union for "your company" (J.A. 1023) to pledge in advance to become bound by the 1984 NBCWA once it was negotiated. (3a).

The union reached agreement with BCOA on the 1984 NBCWA effective October 1, 1984. (3a). Because Omar chose to remain in BCOA, it became bound to the 1984 NBCWA. Despite individual bargaining, UMWA did not reach agreement on new contracts with any of the remaining operating companies by September 30, 1984. As a result the union employees (totalling approximately 1000) of each company, except Omar, began strikes against their respective employers on October 1, 1984. (4a). Collective bargaining between each company and the UMWA continued.<sup>4</sup>

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<sup>4</sup> Another unionized Massey subsidiary not party to this case, Vesta Mining Company, negotiated and signed a contract with the union. (J.A. 1044). The negotiated agreement differed in several material respects from the 1984 NBCWA. (*Id.*).

During continuing contract negotiations, UMWA demanded A. T. Massey and the resource companies join the negotiations. (J.A. 990, 1039). On November 1, 1984, the UMWA filed unfair labor practice charges with the National Labor Relations Board ("NLRB") alleging, *inter alia*, that A. T. Massey and the resource companies constituted a common employer with each of the operating companies, and thus were required to participate in bargaining. (4a).

With the exception of Vesta, the individual contract negotiations failed. In an attempt to expedite contract negotiations and end strike violence, A. T. Massey and the resource companies joined the contract negotiations for each company on April 10, 1985. (J.A. 1272-3). Between April and August, 1985, the companies (except Omar) and the UMWA bargained in well over twenty sessions and reached tentative agreement on numerous contractual terms. (J.A. 1002A, 1272-73). However, when the parties were unable finally to agree on new contracts for the operating companies, negotiations broke off on or about August 15, 1985. (J.A. 1273-74).<sup>5</sup>

On December 20, 1985, the companies (except Omar), the UMWA, and the NLRB entered into a settlement agreement disposing of the single employer charges. (4a; J.A. 741). As part of the agreement, UMWA agreed that "if

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<sup>5</sup> The UMWA filed another charge with the NLRB claiming the companies had engaged in this bargaining without the required intention to reach new contracts to succeed the 1981 NBCWA. (4a). This charge was dismissed by the NLRB.

the [companies] and [the union] agree during negotiations [that] any contracts. . . shall be signed only by the operating companies. . . A. T. Massey will not be obligated to sign the contracts.” (*Id.*).

After this settlement the union terminated the strike. (5a). Simultaneously, the UMWA made, for the first time, the startling assertion that the negotiating companies were and had been bound to the 1984 NBCWA for the length of the strike. This claim was based on Omar’s alleged agreement to the contract on respondents’ behalf. (*Id.*). The UMWA did not explain why it had engaged in protracted bargaining for new contracts or why it ordered over 1000 people to engage in a fifteen month strike when it already “had a contract” with these companies.

The UMWA’s radical change of position had immediate consequences. The union refused to continue bargaining with the companies, rejecting several demands made by the companies to do so in accordance with the NLRB settlement agreement. (J.A. 235, 1260, 1292). The UMWA based its refusal on the claim that it already had a contract with the companies, through Omar. As a result some of the negotiating employers filed charges with the NLRB challenging that refusal as well as the union’s insistence that all companies abide by the 1984 NBCWA. (J.A. 908, 912). In a letter to all parties regarding these charges (J.A. 1292), the NLRB’s General Counsel determined that the companies, except Omar, were not bound by the 1984 NBCWA because there is “no evidence. . . that Omar was authorized to negotiate on behalf of the

other subsidiaries or that Omar had apparent authority to bind the other subsidiaries to the 1984 NBCWA." She concluded that UMWA's insistence that the companies abide by the 1984 NBCWA violated the National Labor Relations Act ("the Act").

Additionally, on December 24, 1985, the union filed a grievance at Omar against all respondent companies, demanding they abide by the 1984 NBCWA. (5a). On January 2, 1986, the union filed the instant case seeking an injunction compelling the companies to arbitrate, pursuant to the 1984 NBCWA, the question whether the companies were bound by that contract. (5a).

## **2. Litigation History**

In the district court the union never contested the fact that Omar had no authority to bind the other companies to the 1984 NBCWA (J.A. 197-99), or that the employees of each company constitute a separate, appropriate bargaining unit. (J.A. 161). Nevertheless, the district court enjoined the companies to arbitrate "the alleged application [to the companies] of the 1984 National Bituminous Coal Wage Agreement." (14a).

On appeal, the Fourth Circuit reversed, observing, "In deferring to the arbitrator. . . the district court overlooked the necessity of deciding the judicial question of whether agreement to arbitrate had, in fact, taken place." (8a). Invoking *AT&T Technologies, Inc. v. Communications Workers of America, et al.*, \_\_\_ U.S. \_\_\_, 106 S. Ct. 1415 (1986), the Fourth Circuit vacated the injunction requiring arbitration. (*Id.*).

At oral argument respondents' counsel asserted that the undisputed facts regarding the separateness of the bargaining units and Omar's lack of authority to bind the other companies permitted final disposition of the case on appeal. Union counsel did not object.<sup>6</sup> Thus, the Fourth Circuit's "review of the record" convinced the court there was "no evidence to support a conclusion" that the non-Omar companies were "bound" by the 1984 NBCWA. (9a).

### ARGUMENT SUMMARY

Certiorari is requested to vindicate both "effective enforcement of an arbitration pledge" and "the uniform labor policy favoring arbitration." (Pet. 7). Granting the petition will not achieve either objective since there is no issue to arbitrate in this case.<sup>7</sup> Whether respondents are bound by the 1984 NBCWA "is to be determined by the court, not an arbitrator." *AT&T Technologies, Inc. v.*

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<sup>6</sup> At oral argument counsel for the union admitted that, irrespective of its procedural posture, the record below was complete for final disposition by the appellate court. Asked to assume that a court, not an arbitrator, would decide whether the companies were bound by the 1984 NBCWA, UMW counsel stated the union did not need to introduce additional evidence. (Transcript of Oral Argument, pp. 49, 50). The UMW did file a post argument memorandum, limiting the concession, but not raising any factual issue as to the bargaining history and bargaining unit questions.

<sup>7</sup> This does not mean that there may never be arbitrable issues which could arise under Article 1A(f) of the 1984 NBCWA. In a statement concerning this Article credited by the NLRB and Court of Appeals for the Third Circuit, then UMW General Counsel Yablonski stated,

The standard UMW accretion clauses--known as  
'Application of contract to coal lands'--merely commits an  
(continued)

*Communications Workers*, 106 S.Ct. at 1418. Well established principles of labor law rather than "single employer", "alter ego" or "corporate veil piercing" theories govern whether the companies are bound by the 1984 NBCWA. Those labor law principles are not challenged in the petition and were not at issue in the cases cited by UMWA as creating a conflict among the circuits. (Pet. 10-13). Unmasked by the facts, the petition simply complains that the Fourth Circuit failed to impose upon respondents a contract to which they did not agree. That complaint does not warrant review by this Court.

## ARGUMENT

### **1. The Fourth Circuit's Determination That Contractual Agreement By One Bargaining Unit Does Not Bind Other, Separate Bargaining Units, Absent Their Authorization, Is Consistent With Established Labor Law Principles.**

The parameters of labor and management's collective bargaining obligations established by the Act govern the outcome of this case. These principles are well ingrained in the nation's labor laws and the petition fails to suggest any

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employer who agrees to it to apply the terms of that agreement to any *new mining operation* which may be developed during the life of the agreement if the UMWA is either recognized or certified as the collective bargaining agent of that operation. [Emphasis added].

*UMWA, Local 1854*, 238 NLRB 1583, 1618 (1978), *enforcement denied in part, Amax Coal Co. v. NLRB*, 614 F.2d 872 (3rd Cir. 1980), *rev'd in part*, 453 U.S. 322 (1981).

reason why this Court should reexamine them.

Section 9 of the Act confines the collective bargaining obligation to "a unit appropriate for such purposes." 29 U.S.C. § 159(a).

The duty imposed on employers and labor organizations by the provisions of the National Labor Relations Act to bargain collectively is predicated on the cardinal principle that the existing unit, whether established by certification or voluntary recognition, fixes the periphery of the bargaining obligation.

*Utility Workers Union (Ohio Power Co.)*, 203 NLRB 230, 238 (1973), *enforced*, 490 F.2d 1383 (6th Cir. 1974).

Where the bargaining units are separate, the corporate relationship of the employing entities does not matter. One employer can, and often does, have several, separate bargaining units of employees and may insist on separate negotiations for each unit. *Utility Workers Union*, 203 NLRB 230 (four bargaining units of the same employer); *Local 32B-32J, Service Employees (Allied Maintenance Corp.)*, 258 NLRB 430 (1981) (two bargaining units of the same employer); *Local Union No. 323, International Brotherhood of Electrical Workers (Active Enterprises, Inc.)*, 242 NLRB 305 (1979) (two bargaining units of the same employer).

In *Shell Oil Co.*, 194 NLRB 988 (1972), *enforced*, 486 F.2d 1266 (D.C. Cir. 1973), the union represented the employees of each of nineteen Shell operations. The NLRB reaffirmed that, under the Act, Shell had the right to bargain separately for each of the nineteen companies

because the union recognized each as a "separate bargaining unit." 194 NLRB at 996. That is precisely what has occurred in the instant case.

Unless the employer and the union "voluntarily agree" to merge or consolidate the employer's separate bargaining units into one, "the several units... separately recognized... are, accordingly, the appropriate separate units for collective bargaining." *Utility Workers*, 203 NLRB at 239. Absent the employer's voluntarily agreement, a union "may not, however, force the merger of the separate units" by attempting "to force the contract terms negotiated for one unit upon the other units." (*Id.*)<sup>8</sup>

Of course, contracts for separate units can be and often are bargained in a single negotiation. The most common example is multi-employer bargaining, such as was carried out by the operating companies through BCOA. However, such negotiations are consensual and, as explained by the union (J.A. 1086), so long as an employer does so on a timely basis, it may withdraw authority from the association to

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<sup>8</sup> Repeatedly, UMWA asserts that there is no bargaining unit issue involved in this case because the employees of each of the companies have already designated the union as their collective bargaining representative. (Pet. 11, n.11; 13, n.13). This argument misses the point. Each unit of employees, and the employer, is entitled under the Act to negotiate and agree to its own, separate labor contract. *Local Union No. 323*, 242 NLRB at 308. For example, the market for certain types of coal such as low vol metallurgical coal is almost nonexistent given its market dependence on the domestic steel industry. Employees in those bargaining units may have a distinct interest in negotiating for a contract which accounts for more competitive market factors, thus preserving jobs, than do employees in different units who mine a more marketable product. See, e.g., *Shell Oil*, 194 NLRB at 996.

bargain on behalf of its separately recognized bargaining units. *See* n.3, *supra*.

These principles apply directly to this case. There is no allegation that the companies agreed to merge or consolidate these bargaining units into one. Each employing unit timely withdrew from BCOA and Omar authorization for those entities to bargain with the union on its behalf. UMWA bargained with BCOA and Omar knowing that the operating companies did not consent to be bound by the resulting contract. (J.A. 1020). Because each company advised the union that it wanted "to conduct its own labor negotiations with the UMWA", (*Id.*), the union bargained with each company with and without the participation of the parent corporation. Finally, UMWA admits that the employees of each company constitute a separate "historic, recognized bargaining unit, the appropriateness of which is not questioned in this or any other proceeding." (J.A. 161).

The result is that the companies and their separate units of employees are not bound by the 1984 NBCWA as a matter of well established labor law. As the Second Circuit recently held,

As a matter of law, however, it is against public policy to bind a non-signatory company where the employees of both companies do not constitute a single collective bargaining unit.

*Local One v. Stearns & Beale Inc.*, 812 F.2d 763, \_\_\_, 124 L.R.R.M. (BNA) 2809, 2816 (2nd Cir. 1987).

Indeed, as the NLRB's General Counsel has already determined, the union's insistence that these companies are bound by the 1984 NBCWA violates Section 8(b)(3) of the Act. (J.A. 1292). *Local Union No. 32B-32J*, 258 NLRB at 434.<sup>9</sup>

Given admittedly separate bargaining units, the Fourth Circuit correctly distilled the issue in this case down to one of authorization by the companies for Omar and BCOA to contract on their behalf. *Utility Workers*, 203 NLRB at 239. As the Fourth Circuit pointed out, it is undisputed that no such authorization was given and all previous authorization withdrawn. Thus, under the unique facts of this case, the Fourth Circuit's authorization requirement is entirely consistent with well established labor law principles.

## **2. The Fourth Circuit's Decision Does Not Conflict With Those Of Other Circuits.**

UMWA's argument that the Fourth Circuit's decision conflicts with decisions of other circuit courts ignores the crucial factual difference here — it is undisputed that the employees of each of the companies constitute a separate bargaining unit. In a case heavily relied on by UMWA (Pet. 10), the Fifth Circuit explained,

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<sup>9</sup> See also *Local Union No. 323*, 242 NLRB 305; *International Brotherhood of Electrical Workers, Local 1049 (Lewis Tree Services, Inc.)*, 244 NLRB 124 (1979); *International Union of Operating Engineers, Locals 542, 542-A, 542-B (York County Bridge, Inc.)*, 216 NLRB 408 (1975), enforced, 532 F.2d 902 (3rd Cir. 1976), cert. denied, 429 U.S. 1072 (1977); *Utility Workers Union*, 203 NLRB 230; *Shell Oil Company*, 194 NLRB 988; *George M. Hart d/b/a San Diego Cabinets*, 183 NLRB 1014 (1970), enforced sub. nom *NLRB v. Hart*, 453 F.2d 215 (9th Cir. 1971), cert. denied, 409 U.S. 844 (1972).

A finding of a single employer status does not by itself mean that all the subentities comprising the single employer will be held bound by a contract signed only by one. Instead, having found that two employers constitute a single employer for purposes of the NLRA, the Board then goes on to make a further determination whether the employees of both constitute an appropriate bargaining unit. . . . [E]ven if two firms are a single employer, a union contract signed by one would not bind both unless the employees of both constituted a single bargaining unit.

*Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 505 (5th Cir. 1982), *cert. denied*, 464 U.S. 932 (1983) (emphasis added).

Thus, the single employer analysis is a *two pronged test*, both elements of which must be met before a non-signatory can be bound to a signatory's contract. As the cases cited by UMWA (Pet. 10-13) confirm, the first prong relates to the relationship between corporations (single employer) and the second, to the relationship among employees of those employers (appropriate bargaining unit).<sup>10</sup>

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<sup>10</sup> *Gateway Structures, Inc. v. Carpenters 46 Northern Calif. Counties Conference Bd.*, 779 F.2d 485, 489 (9th Cir. 1985) ("To bind the non-signatory under this doctrine, however, the two employers must be shown to constitute a single bargaining unit."); *Crest Tankers, Inc. v. National Maritime Union*, 605 F. Supp. 1270, 1276 (E.D. Mo. 1985) ("a non-signatory . . . may be bound by a collective bargaining agreement signed by another, if . . . the non-signatory . . . and the signatory constitute a 'single employer'; and, second . . . the employees of both employers constitute a single appropriate bargaining unit."), *rev'd on other grounds*, 796 F.2d, 234 (8th Cir. 1986). See, e.g., *NLRB v. Don Burgess*, 596 F.2d 378, 386 (9th Cir.) ("The fact that two companies have been designated a single employer for purposes of the Act is not determinative as to whether both are bound by a union contract signed by one of them. This requires that the employees of each unit constitute a

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Because the bargaining units are admittedly distinct, the single employer doctrine does not apply to this case as a matter of law. Thus, the alleged "conflict in the circuits" (Pet. 7) does not exist.

### **3. The UMWA's Corporate Veil Piercing Argument Does Not Apply To This Case.**

On petition for rehearing, the union first raised the corporate veil piercing doctrine.<sup>11</sup> Conceptually, the doctrine is inapposite. Veil piercing is an equitable theory of corporate, not labor, law used to hold a corporate parent liable for debts its subsidiary cannot discharge. *Alkire v. NLRB*, 716 F.2d 1014, 1021 n. 5 (4th Cir. 1983).<sup>12</sup> It has

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single bargaining unit."), *cert. denied*, 444 U.S. 940 (1979); *Edward J. White, Inc.*, 237 NLRB 1020, 1025 (1978) ("where two enterprises are found to constitute a single employer the test to be applied is whether the employees of each enterprise constitute the appropriate unit or whether the employees of both enterprises constitute separate units"). See also *South Prairie Construction Co. v. Local No. 627, Int'l Union of Operating Engineers*, 425 U.S. 800 (1976); *Carpenters Local 1478 v. Stevens*, 743 F.2d 1271 (9th Cir. 1984), *cert. denied*, 471 U.S. 1015 (1985); *Local 627, International Union, etc. v. NLRB*, 595 F.2d 844 (D.C. Cir. 1979); *NLRB v. Al Bryant, Inc.*, 711 F.2d 543 (3rd Cir. 1983), *cert. denied*, 464 U.S. 1039 (1984); *Naccarato Construction Co.*, 233 NLRB 1394 (1977).

<sup>11</sup> With respect to the "alter ego" doctrine, also raised initially in UMWA's petition for rehearing, footnote 9 in the union's petition amply demonstrates why the doctrine is inapplicable to this case. As described in the footnote and by *Pratt-Farnsworth*, as well as two other cases cited by the union, *Crest Tankers, Inc.*, 796 F.2d 234 and *American Bell, Inc., v. Federation of Telephone Workers*, 736 F.2d 879 (3rd Cir. 1984), the focus in an alter ego case is on "the existence of a disguised continuance or an attempt to avoid the obligations of a collective bargaining agreement through a sham transaction or technical change in operations." 690 F.2d at 508. No transaction, disguised continuance or change in operations of any sort is alleged to have taken place in this case.

<sup>12</sup> In the few instances where it has been invoked in a labor related  
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never been used by any court to apply a collective bargaining agreement negotiated by one company to a separately recognized unit of employees of the same or another company.

Even in the two cases cited by the union where the concept was either mentioned, *Service Employees Union, Local 47 v. Commercial Property Services*, 755 F.2d 499 (6th Cir.), *cert. denied*, 106 S. Ct. 174 (1985), or discussed, *American Bell, Inc. v. Federation of Telephone Workers*, 736 F.2d 879 (3rd Cir. 1984), it was not applied. Indeed, in *American Bell*, 736 F.2d at 887, and a related subsequent decision, the Third Circuit observed that:

there is no policy of federal labor law, either legislative or judge-made, that a parent corporation is bound by its subsidiary's labor contracts simply because it controls the subsidiary's stock and participates in the subsidiary's management.

*AT&T Inf. Systems v. Local 13000*, 797 F.2d 147, 151 (3rd Cir. 1986). This holding accords with the rulings of two

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context, veil piercing has been limited to establishing a parent corporation's liability for a subsidiary's financial debt, usually to a pension or health benefit fund. See *Contractors, Laborers, Teamsters & Engineers Health and Welfare Plan v. Hroch*, 757 F.2d 184 (8th Cir. 1985) (president of corporation held liable for debt to pension fund); *Seymour v. Hull and Moreland Engineering*, 605 F.2d 1105 (9th Cir. 1979) (Court refused to pierce the veil to hold individual partners liable for debt to benefit trust fund); *United Rubber, Cork, Linoleum and Plastic Workers v. Great American Industries Inc.*, 479 F. Supp. 216 (S.D.N.Y. 1979) (parent corporation liable for unpaid financial obligations relating to health insurance, pension funds etc.); *International Union, United Automobile Workers v. Cardwell Manufacturing Co., Inc.*, 416 F. Supp. 1267 (D. Kan. 1976) (parent liable for unpaid debts to benefit funds).

other circuits that a non-signatory company could not be bound to arbitrate by virtue of the veil piercing doctrine. See *United Paperworkers International Union v. T. P. Property Corp.*, 583 F.2d 33, 35-36 (1st Cir. 1978); *Plumbers & Fitters, Local 761 v. Matt J. Zaich Construction Co.*, 418 F.2d 1054, 1058, (9th Cir. 1969).<sup>13</sup>

### Conclusion

This case does not warrant review by this Court. It is factually unique and distilled to its essence involves little more than traditional collective bargaining principles. It does not disturb any legal doctrine of national importance.

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<sup>13</sup> Petitioner also asserts that the appellate court should have remanded the case rather than decide it on appeal. When the undisputed facts can lead to only one result or when the only questions presented on appeal are purely ones of law, it is entirely appropriate for the appellate court to address and decide those issues. *Scarborough v. Ridgeway*, 726 F.2d 132, 135 (4th Cir. 1984); *MacMullen v. South Carolina Electric & Gas Co.*, 312 F.2d 662, 670 (4th Cir.), *cert. denied*, 373 U.S. 912 (1963). The same result obtains when the appeal is from the grant or denial of a preliminary injunction. See *Hurwitz v. Directors Guild of America, Inc.*, 364 F.2d 67 (2nd Cir.), *cert. denied*, 385 U.S. 971 (1966). As recited in points 1 and 2 above, the undisputed lack of consent or authorization by the companies to be bound by Omar's contract and the fact that the bargaining units were admittedly separate is dispositive of this case as a matter of law.

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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## APPENDIX

### STATUTES INVOLVED

Section 9(a) of the National Labor Relations Act, 49 Stat. 453, 29 U.S.C. § 159(a):

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.